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TOWNSEND and TOWNSEND and CREW LLP

By: Yvonne Mock

Yvonne Mock

PATENT  
Docket No.: 082871-000610US  
Client Ref. No.: 157,625 US CIP

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Jeffrey Gabbay

Application No.: 10/772,890

Filed: February 4, 2004

For: ANTI-VIRUS HYDROPHILIC  
POLYMERIC MATERIAL

Confirmation No.: 5373

Examiner: Shelley A. Dodson

Art Unit: 1616

SUPPLEMENTAL COMMUNICATION

Mail Stop: AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is a Supplemental Communication. Applicants filed a Notice of Appeal and Amendment After Final Rejection on November 8, 2007. Applicants received, and thank Examiner Dodson for, a telephone call on November 28, 2007, during which the Examiner explained that all grounds of rejection had been withdrawn except a provisional double patent rejection over co-owned application No. 11/648,858.

Examiner Dodson explained that the basis of the provisional double patenting rejection was that the claims of the No. 11/648,858 application were believed to encompass the subject matter claimed in the instant application because the claimed material in the '858 application could have a second layer.

Applicants have now amended the claims of Application No. 11/648,858. A copy of an amendment filed December 7, 2007, is attached. The claims as now pending in Application No. 11/648,858 are explicitly limited to a single layer and do not now encompass a polymeric material with multiple layers. Examiner Dodson agreed this would resolve the provisional double patenting rejection.

This amendment was made solely to expedite prosecution of the current application. Applicants emphasize that the amendment of Application No. 11/648,858 does not indicate agreement with the position communicated by the Office. Indeed, Applicants respectfully submit the Office's rationale is not a proper basis for a provisional double patenting rejection.<sup>1</sup>

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

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<sup>1</sup> MPEP 804(II) explains:

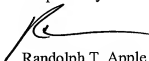
Domination and double patenting should not be confused. They are two separate issues. One patent or application "dominates" a second patent or application when the first patent or application has a broad or generic claim which fully encompasses or reads on an invention defined in a narrower or more specific claim in another patent or application. Domination by itself, i.e., in the absence of statutory or nonstatutory double patenting grounds, cannot support a double patenting rejection. *In re Kaplan*, 789 F.2d 1574, 1577-78, 229 USPQ 678, 681 (Fed. Cir. 1986); and *In re Sarrett*, 327 F.2d 1005, 1014-15, 140 USPQ 474, 482 (CCPA 1964)

Applicant: Gabbay  
Application No.: 10/772,890  
Supplemental Communication  
Page 3

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



Randolph T. Apple  
Reg. No. 36,429

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San Francisco, California 94111-3834  
Tel: (415) 576-0200  
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Attachments: Copy of Preliminary Amendment in copending App. No. 11/648,858 filed  
December 7, 2007 (4 pps.)  
Copy of Electronic Acknowledgement Receipt dated December 7, 2007  
(2 pps.)

RTA:ym

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on December 7, 2007.

PATENT  
Attorney Docket No.: 082871-000110US

TOWNSEND and TOWNSEND and CREW LLP

By: *Thomas Inoue*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Jeffrey Gabbay

Application No.: 11/648,858

Filed: December 28, 2006

For: ANTIMICROBIAL AND  
ANTIVIRAL POLYMERIC  
MATERIALS

Customer No.: 20350

Confirmation No. 3492

Examiner: Unassigned

Art Unit: 1615

PRELIMINARY AMENDMENT

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Prior to examination of the above-referenced application, please enter the  
following amendments and remarks:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this  
paper.

**Remarks/Arguments** begin on page 4 of this paper.

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Amendments to the Claims:

This listing of claims will replace all prior versions, and listings of claims in the application:

Listing of Claims:

1. (Currently Amended) ~~An~~ A single layer antimicrobial and antiviral polymeric material, consisting of a singly layer of polymeric material having microscopic particles of ionic copper encapsulated therein and protruding from surfaces thereof.
2. (Original) An antimicrobial and antiviral polymeric material according to claim 1, wherein said polymeric material is a film.
3. (Original) An antimicrobial and antiviral polymeric material according to claim 1, wherein said polymeric material is a fiber.
4. (Original) An antimicrobial and antiviral polymeric material according to claim 1, wherein said polymeric material is a yarn.
5. (Original) An antimicrobial and antiviral polymeric material according to claim 1, wherein said particles are of a size of between 1 and 10 microns.
6. (Original) An antimicrobial and antiviral polymeric material according to claim 1, wherein said particles are present in an amount of between 0.25 and 10% of the polymer weight.
7. (Original) A wrapping material comprising an antimicrobial polymeric material according to claim 1.
8. (Currently Amended) A condom comprising ~~an~~ a single layer antiviral polymeric material of claim 1 ~~having microscopic particles of ionic copper encapsulated therein and protruding from surfaces thereof.~~
9. (Currently Amended) A process for preparing ~~an~~ a single layer antimicrobial and antiviral polymeric material of claim 1, comprising preparing a polymeric slurry, introducing an ionic copper powder and dispersing the same in said slurry and then extruding said slurry to form

a polymeric material wherein particles of said ionic copper are encapsulated therein and protrude from surfaces thereof.

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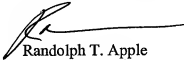
REMARKS/ARGUMENTS

With entry of this amendment, claims 1-9 are pending in this application. Claims 1, 8 and 9 are amended to focus the prosecution on certain commercially valuable aspects of the invention, namely, embodiments in which the polymeric material consists of a single layer. Amendments are made without prejudice to future prosecution of the claims in this or a related application.

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-462-5330.

Respectfully submitted,

  
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## Electronic Acknowledgement Receipt

EFS ID:	2565130
Application Number:	11648858
International Application Number:	
Confirmation Number:	3492
Title of Invention:	<b>COPY</b> Antimicrobial and antiviral polymeric materials
First Named Inventor/Applicant Name:	Jeffrey Gabbay
Customer Number:	20350
Filer:	Randolph Ted Apple/Yvonne Mock
Filer Authorized By:	Randolph Ted Apple
Attorney Docket Number:	082871-000110US
Receipt Date:	07-DEC-2007
Filing Date:	28-DEC-2006
Time Stamp:	19:09:19
Application Type:	Utility under 35 USC 111(a)

### Payment information:

Submitted with Payment	no
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### File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1	Preliminary Amendment	PREAMD_082871-000110U S.PDF	108239 <small>b4d530da74c22461e60f9c8122e8e0ae eae1e867</small>	no	4

### Warnings:

### Information:



This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

**New Applications Under 35 U.S.C. 111**

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

**National Stage of an International Application under 35 U.S.C. 371**

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

**New International Application Filed with the USPTO as a Receiving Office**

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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